

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO – Western Division at Cincinnati**

HUNTER DOSTER, et. al.	:	Case No. 1:22-CV-84
Plaintiffs	:	
v.	:	
FRANK KENDALL, et. al.	:	
Defendants	:	

DECLARATION OF CHRISTOPHER WIEST PURSUANT TO FRCP 56(d)

Pursuant to 28 U.S.C. §1746, the undersigned, Christopher Wiest, makes the following declaration, under penalty of perjury under the laws of the United States of America, that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Christopher Wiest, and I am one of the counsel for the Plaintiffs, and make this declaration pursuant to FRCP 56(d).
2. We require, but have not had the opportunity, to take certain discrete discovery on the issues of mootness, as explained herein.
3. We have been unable to take discovery because this matter, apart from briefing mootness, has been generally stayed since March 3, 2023. In the same manner, the circumstances and facts that the Government relies upon to argue mootness have all arisen in December, 2022 through the passage of the NDAA, and then more significantly, in January and February, 2023 as Defendants have attempted certain corrective action to address some but not many of the harms caused to service members by its prior mandate.

4. Despite the need for some limited discovery to properly oppose Defendant's motion claiming mootness, Plaintiffs have thus not been afforded the opportunity to take discovery on the facts and circumstances that the Government relies upon to claim mootness.
5. We have attached, hereto, proposed narrow written discovery directed to the issue of mootness, at **Exhibit A**.
6. We also seek the Court's permission to take a limited, narrow FRCP 30(b)(6) deposition of the United States and Secretary of the Air Force, limited solely to the issue of mootness, and more narrowly to the following discrete subtopics: (i) the number and characterization of adverse discharges issued to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate; (ii) the Government's definition of "adverse action" in terms of remedial action and what that includes and what that does not include; (iii) retention in AMJAMS of entries related to discipline imposed upon person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate, the reason(s) therefore, and under what circumstances, who has the ability to access same, and the number of such reports; (iv) the effects of a "blank" or sanitized performance reports (either officer or enlisted) on future promotion or assignment prospects, in terms of the current corrective action for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate and the number of person(s) effected; (v) the loss of retirement points and "good years" on reservists and guard members for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate, the lack of any intention to rectify same, and the number of person(s)

effected; (vi) any current COVID-19 vaccine requirements that are in place, to whom they apply, and under what circumstances; (vii) any planned future COVID-19 vaccine requirements and under what circumstances; (viii) the number, circumstances, and status of promotion proprietary actions (as well as an explanation of same) for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate; and (ix) other remaining consequences and effects related to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

Pursuant to 28 U.S.C. §1746, I declare under penalties of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 5/16/2023.

A handwritten signature in black ink, appearing to read 'Christopher Wiest', written over a horizontal line.

Christopher Wiest

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EXHIBIT A – PROPOSED WRITTEN DISCOVERY TO THE UNITED STATES

All Definitions and Instructions from Plaintiffs’ First Set of Discovery are hereby
reincorporated.

Interrogatories:

1. Identify the number and characterization of adverse discharges issued to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

2. Identify the Government’s definition of “adverse action” in terms of remedial action and what that includes and what that does not include.

RESPONSE:

3. Identify each remaining AMJAMS entry related to discipline imposed upon person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate, the reason(s) therefore, and under what circumstances, who has the ability to access same, and the number of such reports.

RESPONSE:

4. Identify the effects of a “blank” or sanitized performance reports (either officer or enlisted) on future promotion or assignment prospects, in terms of the current corrective action for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate and the number of person(s) effected.

RESPONSE:

5. Identify the number of reserve or national guard airmen or guardians who were not permitted to accrue retirement points and “good years” towards retirement (including those transferred to the Individual Ready Reserve), due to their unvaccinated status, who submitted a religious accommodation request to the COVID-19 vaccine mandate, the number of retirement point(s) lost.

RESPONSE:

6. Identify the circumstances, and status of promotion proprietary actions (as well as an explanation of same) for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

7. Identify any other remaining consequences and effects related to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

Request for Production:

1. Produce documents that reflect the number and characterization of adverse discharges issued to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

2. Produce documents that reflect the Government's definition of "adverse action" in terms of remedial action and what that includes and what that does not include.

RESPONSE:

3. Produce documents that reflect each remaining AMJAMS entry related to discipline imposed upon person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate, the reason(s) therefore, and under what circumstances, who has the ability to access same, and the number of such reports.

RESPONSE:

4. Produce documents that reflect the effects of a "blank" or sanitized performance reports (either officer or enlisted) on future promotion or assignment prospects, in terms of the current corrective action for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate and the number of person(s) effected.

RESPONSE:

5. Produce documents that reflect the number of reserve or national guard airmen or guardians who were not permitted to accrue retirement points and "good years" towards retirement (including those transferred to the Individual Ready Reserve), due to their

unvaccinated status, who submitted a religious accommodation request to the COVID-19 vaccine mandate, the number of retirement point(s) lost.

RESPONSE:

6. Produce documents that reflect the circumstances, and status of promotion proprietary actions (as well as an explanation of same) for person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

7. Produce documents that reflect any other remaining consequences and effects related to person(s) who submitted a religious accommodation request to the COVID-19 vaccine mandate.

RESPONSE:

8. Produce documents that reflect any current plans or policies, including in draft or other form, that relate to any planned punishment of any member who declined a COVID-19 vaccine, including any order to vaccinate.

RESPONSE:

9. Produce documents that reflect any current plans or policies, including in draft or other form, that relate to any intention to implement or reimplement a COVID-19 vaccine.

RESPONSE:

